GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute :—Industrial Dispute between the Workmen and the Management of M/s. Canara Public Conveyance Co. Ltd., Mangalore.

Award of the Labour Court, Hubli—Published.

Read the following papers :

(i) Letter No. . 1209/67-68, dated 17th August 1967 from Shri Syed Azizuddin Ahmed, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT AT HUBLI.

Dated 17th August 1967.

Reference (I D) (LCH) No. 83 of 1966

Present :

Shri Syed Azizuddin Ahmed, M. A., B. L., *Presiding Officer.*

Between :

The Workmen of M/s. Canara Public Conveyance Co , Ltd., Mangalore represented by The Secretary, Karnataka Automobile & Engineering Workers Union, Mangalore ... ... *I Party.*

And.

The Management, M/s. Canara Public Conveyance Co. Ltd., Mangalore ... ... *II Party.*

This is a reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 made by the Government of Mysore in their Order No. LMA 602 LLD 66, dated 26th December 1966. The points of dispute referred for adjudication are as under.—

I. Are the Management of Canara Public Conveyance Co., Ltd., Mangalore, justified in dismissing Sri Hamon Godfred Soans, with effect from 5th May 1966 ?

II. If not, is he entitled to reinstatement with full back wages ?

III. If not, to what other reliefs is the worker entitled ?

2. The cause of the aggrieved workman has been sponsored and espoused by The Karnatak Automobile Engineering Workers

Union, Mangalore through its Secretay. Sri T. P. Rao appeared for the I Party while Sri K. S. Rao, President of the General Managements' Association, Mangalore appeared for the II Party. In response to the notices issued by the Court, the parties have filed their pleadings, dated nil-January 1967 and 27th January 1967 respectively.

3. The case of the I Party is that the aggrieved workman Sri Hamon Godfred Soans was working with the II Party as a garage helper from 1962 onwards on a daily wage of Rs. 3-14. He discharged his duties faithfully and without any blemish. On 5th May 1966 the workman received an order from the management stating that he has been dismissed from service. The enquiry which was held in this behalf was against law and the principles of natural justice and vitiated by material irregularities. The findings of the management are perverse. The dismissal amounts to his victimisation. It was prayed that the management be directed to reinstate the workman with continuity of service and with full back wages.

4. The management contested the claim. It was pleased interalia that the secretary of the union has no right to represent the workmen of the management and as such there is no industrial dispute as defined U/s 2 (k) of the Industrial Disputes Act, 1947. The management served a show cause notice dated 30th March 1966, calling upon the aggrieved workman to explain why suitable action should not be taken against him for his habitual absence without leave as contemplated under the Standing Orders No. 18 (3) (d) of the company. The delinquent workman gave his explanation dated 5th April 1966 and the same was found unsatis factory. Therefore, an enquiry was held in this regard. It was held with due notice to the workman and he took part in the same. The enquiry was held according to the accepted principles of natural justice and the delinquent was given all the facilities to defend himself. The witness in support of the charge was examined in his presence and he was given an opportunity to cross-examine the witness. He also gave his own statement at the enquiry. On receipt of the report from the enquiry officer and after perusing the relevent records, the management came to the conclusion that the charge was proved against him and they dismissed him from service in view of the seriousness of the charge. It was prayed that the reference be dismissed with costs upholding the contention of the management. At the time of hearing Sri K. S. Rao stated that he would not press the preliminary obiection taken in the Counter Statement. He further stated that the

management sticks-up to the proceedings of the domestic enquiry. The points of dispute specified in the order of reference were adopted as issues in the case.

FINDINGS

5. The parties have submitted the relevent documents in their possession. Sri K. S. Rao, the learned representative of the management took me in detail through the proceedings of the domestic enquiry. Ex. M.1, dated 30th March 1966 is the show-cause notice-*cum*.charge sheet issued against the workman. A peep into this document discloses that he has been charge-sheeted for habitual absence without leave under the Standing Orders No. 18 (3) (d) of the company. During the period between April 1965 to 25th March 1966 his absence amounts to 107½ days and absence without obtaining leave or prior sanction amounts to 56½ days. During the entire period he was present for duty only for 154 days. Ex. M-2, dated 5th April 1966 is the explanation of the delinquent. Herein he has admitted that sometimes he had submitted his leave applications after availing the leave. Ex. M.3, dated 12th April 1966 is the notice of enquiry. Ex. M-4 is the statement of Sri Vittal Rao, garage clerk of the II Party. In his statement the witness has stated in detail that the delinquent was absent during this period without submitting leave applications for 56½ days and was absent on leave for 107½ days and he was present in all for 154 days. In his statement Ex. M-4 (a) the delinquent has admitted that he was absent without leave for 56½ days and on leave for 107½ days. It is not as though he was ignorant of the company's rules. He admits that he knows about the rules of attendance. In view of his admissions he declined to lead evidence in defence. The enquiry officer submitted his findings as per Ex. M-5. Thereupon, the competent authority passed the impugned order of dismissal. The I Party has filed three show-cause notices and the explanation given by the workman to the management. They have been marked as Exs. W-1 to W-4. The learned representative of the mangement submitted that the delinquent has admitted his absence without leave for 56½ days and absence on leave for 107½ days. His total attendance for the year is only for 154 days. No management worth the name can savour with equinamity of mind such irregular attendance on the part of the workmen. Should the workmen indulge in such absence, there would be dislocation in the work of the company and the work work would suffer. Sri T. P. Rao, the

learned representative of the I Party argued with reference to a ruling reported in 1967 (1) LLJ page 378 that the management cannot reopen the charge relating to absence when his earlier explanation was accepted and the absence was condoned. In the ruling referred to above, it has been observed.

> "Having regard to the circumstances in which earlier proceedings were terminated, it was not within the competency of the disciplinary authority to examine those charges a Second time in 1964 when the discontinuance of the first proceeding was the outcome of the acceptance of the explanation."

Sri K. S. Rao replied that this ruling is distinguishable on facts. Ex. W-1 relates to the absence of the delinquent for the period from 6th December 1965 to 14th December 1965, Ex. W-2 relates to the period from 23rd February 1966 to 25th February 1966 and Ex. W-3 relates to the period from 12th March 1966 to 17th March 1966. These proceedings were not with reference to the specific charge of habitual absence without leave under the Standing Orders 18 (3) (d) of the company. I hold that the ruling referred to by the learned representative of the I Party is not on all fours with the facts of the reference in hand. The entire question revolves round the fact whether this Court should interfere with the finding of the enquiry officer. In this connection I would do well to refer to the erudite observations of Justice Kumarayya of Andhra Pradesh High Court reported in 1967 (2) LLJ page 80/82.

> "The general principle is beyond doubt. The broad proposition I entertain no doubt about and it seems to be the only question that properly arises here, is as to the competence of the Labour Court to sit in judgment as a Court of appeal on the findings reached by the domestic forum. It is too late in the day to contend as if it were doubtful that where the enquiry was fair and proper, the Labour Court can yet review the evidence recorded by the domestic forum and interfere with the finding reached by it (domestic forum). By competent authority including that of the Supreme Court it has been told that in cases of dismissal for misconduct where domestic enquiry has been properly held, the Labour Court does not act as a Court of appeal and substitute its own judgment or that of the management. Undoubtedly, the management of the

concern has full powers to be in control of its own internal administration and discipline. This power, however, is not unrestricted and when a dispute arises, which is an industrial in nature, the Lobour Courts have powers to see whether the termination of workman is justified and grant appropriate relief. This power will be exercised only when it is clear that the management do not act in good faith had been guilty of victimisation or unfair labour practice or in the enquiry held there has been violation of the principles of natural justice or there is no material to support the order of dismissal made by them or that the conclusion reached to that effect is arbitrary, perverse and baseless."

In the instant case, the enquiry has been flawless. The delinquent has admitted his absence on leave and absence without leave. The learned representative of the I Party could not lay his finger on any defect in the domestic enquiry. From the material on record, I do not find sufficient grounds to interfere with the findings of the enquiry officer. The points of dispute are answered in favour of the II Party.

AWARD

The management of M/s. Canara Public Conveyance Co. Ltd. Mangalore is justified in dismissing Sri Hamon Godfred Soans with effect from 5th May 1966. He is not entitled to reinstatement with full back-wages. He is not entitled to any other relief. No order as to costs.

Place: Hubli
Date: 17-8-1967.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli.

ANNEXURE

Reference (ID) (LCH) No. 83 of 1966

Witnesses examined for I Party

Nil

Witnesses examined for II Party

Nil

Documents marked for I Party

Exhibits :

W—1 Show cause notice dated 14th December 1965 of the II Party

W—2 Show cause notice dated 17th March 1966 of the II Party

W—3 Show cause notice dated 25th February 1966 of the II Party

W—4 Explanation dated 22nd March 1966 given by the worker to II Party

Documents marked for II Party

M—1 Office copy of the show cause notice issued to Sri Hamon Godfred Soans bearing his acknowledgment.

M—2 Explanations dated 5th April 1966 from Sri Hamon Godfred Soans in reply to Ex. M-1.

M—3 Office copy of the Enquiry Notice dated 12th April 1966.

M—4 Statement of Sri. A. Vittal Rao dated 25th March 1966.

M—4 (a) Statement of Sri Hamon Godfred Soans dated 25th April 1066.

M—5 Enquiry report dated 26th April 1966.

M—6 Dismissal order dated 5th May 1966 passed against Sri Hamon Godfred Soans.

Place : Hubli.

Date : 17-8-1967.

SYED AZIZUDDIN AHMED
Presiding Officer,
Labour Court, Hubli.

ORDER

Bangalore, dated 26th August 1967.

S. O. 1796.—WHEREAS by State Government Order No. L M A 602 LLD 66, dated 26th December 1966, the Industrial Dispute between the Workmen and the Management of M/s. Canara Public Conveyance Co. Ltd., Mangalore was referred to the Labour Court, Hubli for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947); the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 602 LLD 66.]

By Order and in the name of the Governor of Mysore,

1005 G. G. PUROHIT, *Under Secy.*